

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

SEARSBORO TELEPHONE)
COMPANY, INC.)

and)

KILLDUFF TELEPHONE COMPANY)

Joint Petition for Waiver of the Definition of)
"Study Area" Contained in Part 36, Appendix-)
Glossary of the Commission's Rules; Petition for)
Waiver of Section 69.605(c) of the Commission's)
Rules Regarding the Definition of "Average)
Schedule Company.")

TRACKING

CC Docket No. 96-45

JOINT PETITION FOR WAIVER

Searsboro Telephone Company, Inc ("Searsboro Telephone"), and Killduff Telephone Company ("Killduff Telephone") (jointly referred to herein as "Petitioners"), by their undersigned attorneys, and pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") rules,¹ respectfully request a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the FCC's rules.² Furthermore, Killduff Telephone requests a waiver of the definition of "average schedule company" contained in Section 69.605(c) of the Commission's rules.

As further detailed below, Searsboro Telephone and Killduff Telephone have entered into an asset purchase agreement whereby Killduff Telephone will purchase the rural exchange of Killduff from Searsboro Telephone. Killduff Telephone is a newly formed entity created for this purpose. Searsboro Telephone seeks a waiver of its existing study area boundaries to remove the

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. Part 36.

Killduff exchange from its current Iowa study area, while Killduff Telephone requests a waiver of the study area boundaries for a new study area consisting only of the Killduff exchange. Killduff Telephone further requests a waiver of the average schedule company definition in order for Killduff Telephone to continue the operations of the Killduff exchange as an average schedule company.

In support hereof, the following is respectfully shown.

I. BACKGROUND

Searsboro Telephone is an incumbent local exchange carrier incorporated under the laws of the State of Iowa. Its principal offices are located at 305 - 7th Avenue, P.O. Box 306, Sully, Iowa 50251. The company is an independent telephone company that provides local exchange telecommunications services in the Searsboro and Killduff exchanges, which are comprised of approximately 210 and 190 access lines, respectively. Searsboro Telephone is an average schedule company, and it is an issuing carrier in the ICORE, Inc. Tariff F.C.C. No. 2. Searsboro is a participant in the NECA carrier common line pool.

Killduff Telephone is a newly formed Iowa corporation, with its principal office located at P.O. Box 508, 7210 Railroad St., Killduff, Iowa 50137. By this Petition, Killduff Telephone seeks to become an average schedule company, and if approved, it intends to become an issuing carrier in NECA Tariff F.C.C. No. 5 and participate in NECA's carrier common line and traffic sensitive pools.

Petitioners have entered into an asset purchase agreement whereby Killduff Telephone will purchase the assets of Searsboro Telephone in the Killduff exchange. Upon receipt of all necessary regulatory approvals and after closing the transaction with Searsboro Telephone, Killduff Telephone will operate the exchange as the incumbent local exchange carrier and begin

providing telecommunications services to Searsboro Telephone's customers in the Killduff exchange.

II. STUDY AREA WAIVER

As the Commission is aware, the study area boundaries were frozen as of November 15, 1984, to prevent telephone companies from establishing high cost exchanges within their existing service territories as separate companies in order to maximize high cost support.³ An incumbent local exchange carrier must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.⁴ In the instant case, Petitioners seek a waiver to remove the Killduff exchange from Searsboro Telephone's study area, and to form a new study area served by Killduff Telephone.

Generally, the FCC's rules may be waived only for good cause shown.⁵ The Commission has consistently ruled that a waiver is appropriate only if special circumstances warrant a deviation from the general rule, and that such deviation will serve the public interest.⁶ In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission has traditionally applied a three-prong standard: (1) the change in study area boundaries must not adversely affect the universal service fund ("USF"); (2) no state commission having regulatory

³ *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Recommended Decision and Order, 49 Fed. Reg. 48325, ¶ 66 (1984); Decision and Order, 50 Fed. Reg. 939 (1985). See also 47 C.F.R. § 36 app. ("MTS and WATS Order").

⁴ See, e.g., *Nemont Telephone Cooperative, Inc. et al.; Joint Petition for Waiver of the Study Area Boundary Freeze Codified in the Part 36, Appendix-Glossary of the Commission's Rules; Petition for Waiver of Sections 61.41(c)(2), 69.3(e)(11) and 69.605(c) of the Commission's Rules*, Order, 18 FCC Rcd 838 (2003) ("Nemont Telephone").

⁵ 47 C.F.R. § 1.3.

⁶ See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972), *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

authority over the transferred exchanges opposes the transfer; and (3) the transfer must be in the public interest.⁷ Furthermore, in order to expedite the processing of study area waiver requests, the Commission has requested that certain information be submitted with each petition.⁸ The FCC has stated that it will expeditiously review all study area waiver petitions that contain the requested data and that do not present novel issues of fact or law.⁹ The instant Petition does not present any novel issues of fact or law, and the supplemental information provided, as well as a demonstration that the FCC's three-prong test is satisfied, is detailed below. Accordingly, swift grant of the requested waivers is appropriate.

A. Impact on the Universal Service Fund

Section 54.305 of the Commission's rules require that the purchaser of an exchange receiving universal service support receive the same amount of support for the acquired exchange as was received prior to the transfer of the exchange.¹⁰ However, rural carriers may receive additional high-cost loop support for new investments in the acquired exchanges.¹¹ As further detailed below, there will not be any adverse impact on the universal service fund because Killduff Telephone will not receive any more USF high-cost support for the Killduff exchange than Searsboro Telephone received after closing of the sale, and Petitioners will not receive any additional high-cost loop support for new investments after the transaction.

⁷ See, e.g., *Nemont Telephone*, ¶ 7.

⁸ *Common Carrier Bureau Establishes Expedited Processing Procedures for Petitioners Seeking Part 36 Study Area Waiver*, Public Notice, 10 FCC Rcd 13228 (1995).

⁹ *Id.*

¹⁰ 47 C.F.R. § 54.305(a).

¹¹ *Blackduck Telephone Company and Arvig Telephone Company; Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules and Related Waiver of Section 54.305 of the Commission's Rules*, Order, 17 FCC Rcd 26402, ¶ 13 (2002).

In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the FCC analyzes whether a study area waiver will result in an annual aggregate shift in high-cost loop support in an amount equal to or greater than one-percent of the total high-cost loop support fund.¹² Although Section 54.305(a) ensures that there will be no adverse impact on the universal service fund, the Commission applies the one-percent guideline to determine the impact on the universal service fund in light of the “safety valve” support mechanism, which enables rural carriers acquiring access lines to receive additional high-cost loop support for post-transaction investments made to enhance the infrastructure of and improve the service in acquired exchanges.¹³ In the instant case, neither Killduff Telephone nor Searsboro Telephone will receive additional support for new investments because they will operate the Killduff and Searsboro exchanges, respectively, as average schedule companies. The amount of high-cost support each company will receive is calculated pursuant to predetermined average schedule company formulas, and such investments will not affect the amount of support received from the universal service fund.

Attached hereto as Exhibit A are estimates of the USF payments that will be made to Killduff Telephone for the operation of the Killduff telephone exchange if a waiver is granted. As demonstrated therein, grant of the instant petition will not have an adverse impact on USF high-cost support, especially in light of the small number of access lines involved in the transaction. The Commission has previously granted study area waivers involving many times the number of access lines that are the subject of the instant petition, and in those cases, the FCC found that such transactions would have no adverse impact on the universal service fund.¹⁴

¹² *Nemont Telephone*, ¶ 8.

¹³ *Id.*, ¶ 5 and 8.

¹⁴ *See* n.23, *infra*.

B. State Commission Approval

On September 12, 2003, the Iowa Utilities Board ("Board") issued an order approving the sale of the Killduff exchange from Searsboro Telephone to Killduff Telephone. In the order, the Board determined that the transaction was in the public interest, and affirmatively stated that it did not object to the transfer or the requested study area waiver. A copy of the Board's order is attached hereto as Exhibit B.

C. Public Interest

The public interest is served by the instant transaction because it will result in the efficient provision of high-quality telecommunications services to rural consumers, and it will result in direct benefits to customers in both the Killduff and Searsboro exchanges. Killduff Telephone intends to make several improvements to the facilities serving the Killduff exchange, including the replacement of switches that will result in the availability of enhanced features and improve the reliability of service in the Killduff exchange. Furthermore, Killduff Telephone plans to build a fiber ring structure throughout the exchange, which will enhance the redundancy and reliability of the network, as well as extend high-speed digital transmission capabilities to areas not currently served by fiber. Killduff Telephone will continue the provision of excellent service quality and customer service to subscribers within the exchange it intends to purchase, and it will provide such service at affordable and competitive prices.

Subscribers in the Searsboro exchange will also benefit from the proposed transaction as Searsboro Telephone intends to use the economic gains from the sale of the Killduff exchange to make upgrades to its equipment. The planned upgrades will permit the company to offer additional and enhanced services in the Searsboro exchange. The transfer of the exchange from

Searsboro Telephone to Killduff Telephone will be completely seamless to the subscribers in each exchange.

Moreover, the proposed transaction will increase operating efficiency and effectiveness regarding the provision of telecommunications services in the Killduff and Searsboro exchanges because it will permit Petitioners to each focus on serving a single telephone exchange, rather than spreading limited personnel and management resources over two rural exchanges. Killduff Telephone's management team will endeavor to ensure that customers continue to receive the high-quality services they are accustomed to receiving, and they will seek to bring innovative and technologically advanced services to subscribers as market conditions warrant. Accordingly, grant of the instant study area waiver request is in the public interest, and should be granted.

D. Further Information in Support of Petition

In support of the instant Petition, Petitioners submit the following supplemental information:

1. Copy of State Regulatory Order

As discussed above, the Iowa Utilities Board does not object to the requested study area waiver. Moreover, the Board found that the upgrades proposed by Searsboro Telephone and Killduff Telephone to be in the public interest. A copy of the Board's order is attached hereto as Exhibit B.

2. Statement of Planned Upgrades

As described above, Killduff Telephone intends to make several improvements to the facilities serving the Killduff exchange, including the replacement of switches that will result in the availability of enhanced features and improve the reliability of service in the Killduff exchange. Furthermore, Killduff Telephone plans to build a fiber ring structure throughout the

exchange, which will enhance the redundancy and reliability of the network, as well as extend high-speed digital transmission capabilities to areas not currently served by fiber. Killduff Telephone plans to continue to utilize the facilities and equipment that are currently in place to serve the Killduff exchange. Searsboro Telephone intends to use the economic gains from the sale of the Killduff exchange to make upgrades to its equipment. The planned upgrades will permit the company to offer additional and enhanced services in the Searsboro exchange. Additional improvements shall be considered and implemented by both companies as market conditions warrant.

3. Impact on USF

A copy of all studies performed in estimating the effect on high-cost USF support is attached hereto as Exhibit A. As discussed above, the proposed transaction will not adversely impact the universal service fund.

4. USF Draw

The proposed transaction will not increase the draw on USF by Searsboro Telephone and Killduff Telephone as required by Section 54.305(a) of the Commission's rules, and as detailed in Exhibit A. Moreover, Petitioners will not receive additional USF support as a result of new investments because they will operate the Searsboro and Killduff exchanges as average schedule companies.

5. Number of Access Lines

Searsboro Telephone currently provides service to approximately 400 access lines in the Killduff and Searsboro exchanges. The proposed transaction will involve the transfer of approximately 190 access lines to Killduff Telephone.

6. Service Area Map

Service area maps detailing the exchange being transferred and the pre-transfer study area boundaries of Searsboro Telephone is attached hereto as Exhibit C.

III. REQUEST FOR WAIVER OF SECTION 69.605(c) – DEFINITION OF AVERAGE SCHEDULE COMPANY

Section 69 605(c) of the Commission's rules provides, in relevant part, that "a telephone company that was participating in average schedule settlements on December 1, 1982, shall be deemed to be an average schedule company."¹⁵ The definition of "average schedule company" does not provide for the creation of new average schedule companies without a wavier of the Commission's rules.¹⁶ The Killduff exchange is currently operated by Searsboro Telephone, which is an average schedule company. Killduff Telephone is a newly created entity acquiring the Killduff exchange from Searsboro Telephone, and Killduff Telephone seeks to continue operating the exchange as an average schedule company. Accordingly, Killduff Telephone respectfully petitions the Commission for waiver of Section 69.605(c) to operate the Killduff exchange as an average schedule company.

A waiver of the Commission's rules may only be granted "if good cause therefor is shown."¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁸ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ Waiver of the Commission's rules is, therefore, appropriate only if special

¹⁵ 47 C.F.R. § 69.605(c).

¹⁶ *Nemont Telephone*, ¶ 28.

¹⁷ 47 C.F.R § 1.3.

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *Id.*

circumstances warrant a deviation from the general rules, and such deviation will serve the public interest.²⁰

The FCC has determined that the special circumstances necessary to justify a waiver of Section 69.605(c) exist for small carriers that lack the resources to operate on a cost-study basis.²¹ The definition of "average schedule company" in Section 69.605(c) was premised upon a policy determination by the FCC that only the carriers with the financial resources and expertise to conduct cost studies without undue hardship should be required to measure the actual costs they incur in providing interstate service.²² Indeed, the FCC has found it appropriate to waive the average schedule company definition for carriers that have many times the number of lines that Killduff Telephone will acquire as a result of the transaction.²³

Moreover, Killduff Telephone should not be required to operate as a cost company because it lacks the resources to perform such studies. It will only have approximately 190 lines, and it will have extremely limited resources in which to devote to administrative tasks. Its

²⁰ *Id.*, *Wait Radio*, 418 F.2d at 1159.

²¹ *Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.; Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 Appendix-Glossary of the Commissions Rules and the Definition of "Average Schedule Company" in Section 69.605(c) of the Commission's Rules*, Order, 15 FCC Rcd 21917, 21922 (2000) (citations omitted).

²² *Id.* (citing *MTS and WATS Order*, 3 FCC Rcd at 6642).

²³ See, e.g., *Jordan Soldier* (640 access lines); *Dumont Telephone Company, Inc., and Universal Communications, Inc., Request for Extraordinary Relief*, Memorandum Opinion and Order, 13 FCC Rcd 17821 (1998) (1,544 access lines); *Petitions for Waiver Filed by Accent Communications, et al.*, Memorandum Opinion and Order, 11 FCC Rcd 11513 (1996) (2,240 access lines); *National Utilities, Inc and Bettles Telephone Co., Inc. Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Report and Order, 8 FCC Rcd 8723 (1993) (2,350 access lines); *New Castle Telephone Co. Petition for Waiver of Section 69.605(c)*, Memorandum Opinion and Order, 7 FCC Rcd 2081 (1992) (1550 access lines); *Papago Tribal Utility Authority Petition for Waiver of Section 69.605(c) of the Commission's Rules*, Memorandum Opinion and Order, 2 FCC Rcd 6631 (1987) (400 access lines).

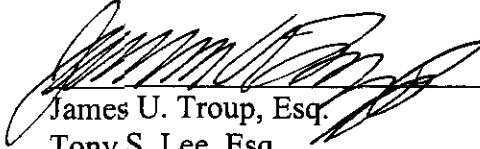
resources are better spent on customer service and network improvements, rather than cost-studies. Given the extremely small size of the exchange, low line count, and limited resources of the company, the diversion of even one employee away from Killduff Telephone's core operations will have a significant impact on the company's ability to serve its customers and provide them with the high level of service they deserve. Killduff Telephone is precisely the type of small rural company to which the FCC envisioned conferring average schedule company status because of the under hardship such companies would suffer if they were required to operate as cost companies. Accordingly, grant of the requested waiver of Section 69.605(c) is warranted.

IV. CONCLUSION

The proposed transaction will result in more efficient service and effective management of the rural exchange involved in the transaction, which benefits the public interest through the expansion and provision of high-quality telecommunications service to rural consumers. Furthermore, permitting Killduff Telephone to operate as an average schedule company is warranted because it will be operating a single small exchange with only about 190 access lines, and the balance of equities do not favor imposing the hardships of operating the Killduff exchange as a cost company. This is especially true in light of the fact that the Commission has previously granted waivers of Section 69.605(c) to carriers many times the size of Killduff Telephone. Accordingly, for the foregoing reasons, Petitioners respectfully request that the Commission grant the instant study area waiver petition, and grant a waiver of Section 69.605(c)

of the Commission's rules to permit Killduff Telephone to operate the Killduff exchange as an average schedule company.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James U. Troup", is written over a horizontal line.

James U. Troup, Esq.

Tony S. Lee, Esq.

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Date: October 24, 2003

EXHIBIT A

USF Impact Study

Average Schedule USF Payment Worksheet (As of January 2003)

STUDY AREA DATA (Use tab key to skip between data entry fields)

Study Area Name	<u>Searsboro Telephone Company</u>	Study Area Code <u>351292</u>
A	<u>377</u> December 2001 access lines (June 2002 view)	
B	<u>2</u> December 2001 exchange count (June 2002 view)	

LOOPS PER EXCHANGE

C	1.015573	Loops per Access Line Factor (from NECA's study)
D	382	2003 Fund USF Loops (A x C)
E	191	Loops per Exchange (D / B)

COST PER LOOP

F	\$267.15	January 2002 NACPL effective January 2002
G	\$510.71	Cost Per Loop filed with the FCC
		If Line E < 600, then: \$573.41451 - \$0.3283176 * LineE
		If LineE >= 600 but < 2650, then \$413.5138 - \$0.06181635 * Line E
		If Line E >= 2650 then: \$249.70

MONTHLY PAYMENT

H	\$267.15	Revised NACPL (updated as of worksheet date)	The fund administrator revises NACPL values as needed to comply with the Commission's cap on the overall fund
I	\$307.22	115% of Revised NACPL	
J	\$400.73	150% of Revised NACPL	
K	\$143.27	Annual Payment Per Loop	
		If Line G <= Line I, then: 0	
		If Line I < Line G <= Line J, then: 0.65 x (Line G - Line I)	
		If Line J < Line G, then: 0.75 x (Line G - Line J) + 0.65 x (Line J - Line I)	
L	\$54,727.37	Annual Payment: Line K x Line D	
M	\$4,561	Monthly Payment: (Line K / 12) x Line D	

Average Schedule USF Payment Worksheet (As of January 2003)

STUDY AREA DATA (Use tab key to skip between columns)

Study Area Name:	<u>Searsboro Exchange</u>	Study Area Code <u>351292</u>
A	<u>202</u>	December 2001 access lines (June 2002 view)
B	<u>1</u>	December 2001 exchange count (June 2002 view)

LOOPS PER EXCHANGE

C	1 015573	Loops per Access Line Factor (from NECA's study)
D	205	2003 Fund USF Loops (A x C)
E	205	Loops per Exchange (D / B)

COST PER LOOP

F	\$267.15	January 2002 NACPL effective January 2002
G	\$506.11	Cost Per Loop filed with the FCC
		If Line E < 600, then: \$573.41451 - \$0.3283176 * Line E
		If Line E >= 600 but < 2650, then \$413.5138 - \$0.06181635 * Line E
		If Line E >= 2650 then: \$249.70

MONTHLY PAYMENT

H	\$267.15	Revised NACPL (updated as of worksheet date)
I	\$307.22	115% of Revised NACPL
J	\$400.73	150% of Revised NACPL
K	\$139.82	Annual Payment Per Loop
		If Line G <= Line I, then 0
		If Line I < Line G <= Line J, then: 0.65 x (Line G - Line I)
		If Line J < Line G, then: 0.75 x (Line G - Line J) + 0.65 x (Line J - Line I)
L	\$28,662.15	Annual Payment Line K x Line D
M	\$2,389	Monthly Payment: (Line K / 12) x Line D

The fund administrator revises NACPL values as needed to comply with the Commission's cap on the overall fund.

Average Schedule USF Payment Worksheet (As of January 2003)

STUDY AREA DATA (Use Tab Key to skip between data entry items)

Study Area Name.	<u>Killduff Exchange</u>	Study Area Code <u>351292</u>
A	<u>175</u> December 2001 access lines (June 2002 view)	
B	<u>1</u> December 2001 exchange count (June 2002 view)	

LOOPS PER EXCHANGE

C	1 015573	Loops per Access Line Factor (from NECA's study)
D	177	2003 Fund USF Loops (A x C)
E	177	Loops per Exchange (D / B)

COST PER LOOP

F	\$267 15	January 2002 NACPL effective January 2002
G	\$515 30	Cost Per Loop filed with the FCC
		If Line E < 600, then: \$573.41451 - \$0 3283176 * LineE
		If LineE >= 600 but < 2650 , then \$413 5138 - \$0 06181635 * Line E
		If Line E >= 2650 then: \$249.70

MONTHLY PAYMENT

H	\$267.15	Revised NACPL (updated as of worksheet date)
I	\$307 22	115% of Revised NACPL
J	\$400.73	150% of Revised NACPL
K	\$146 71	Annual Payment Per Loop
		If Line G <= Line I, then: 0
		If Line I < Line G <= Line J, then: 0.65 x (Line G - Line I)
		If Line J < Line G, then: 0.75 x (Line G - Line J) + 0.65 x (Line J - Line I)
L	\$25,967 29	Annual Payment Line K x Line D
M	\$2,164	Monthly Payment (Line K / 12) x Line D

The fund administrator revises NACPL values as needed to comply with the Commission's cap on the overall fund

Summary of Results Based on January 2003 Data

	<u>Annual Support</u>
Total USF Support Received by Company Before Transaction (377 access lines and 2 exchanges)	<u>\$54,727.37</u>
Searsboro Exchange (202 access lines and 1 exchange)	\$28,662.15
Killduff Exchange (175 access lines and 1 exchange)	<u>\$25,967.39</u>
Total USF Support Received After Transaction	\$54,629.54
 Reduction in USF as a Result of the Transaction	 \$ 97.83

EXHIBIT B

Copy of Iowa Utilities Board Order



STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR
SALLY J. PEDERSON
LT GOVERNOR

IOWA UTILITIES BOARD
IOWA DEPARTMENT OF COMMERCE

SEARSBORO TELEPHONE COMPANY, INC., AND KILLDUFF TELEPHONE COMPANY

Docket Nos. SPU-03-6, TF-03-132, WRU-03-57-478

"ORDER APPROVING JOINT APPLICATION FOR DISCONTINUANCE OF
SERVICE, AMENDING CERTIFICATE, GRANTING PARTIAL TRANSFER OF
CERTIFICATE, APPROVING TARIFF, AND GRANTING WAIVER"

Issued September 12, 2003

Parties Served:

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CERTIFICATE

The undersigned hereby certifies that the foregoing document has been served upon all parties of record in this proceeding in accordance with the requirements of the rules of the Iowa Utilities Board.

Dated September 12, 2003
Shawnae Cameron

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

SEARSBORO TELEPHONE COMPANY,
INC., AND KILLDUFF TELEPHONE
COMPANY

DOCKET NOS. SPU-03-6
TF-03-132
WRU-03-57-478

**ORDER APPROVING JOINT APPLICATION FOR DISCONTINUANCE OF
SERVICE, AMENDING CERTIFICATE, GRANTING PARTIAL TRANSFER OF
CERTIFICATE, APPROVING TARIFF, AND GRANTING WAIVER**

(Issued September 12, 2003)

On April 29, 2003, Searsboro Telephone Company, Inc. (Searsboro Telephone), and Killduff Telephone Company (Killduff Telephone) filed with the Utilities Board (Board) a joint application for approval of discontinuance of service and a partial transfer of certificate pursuant to Iowa Code § 476.20(1) (2003). The filing was identified as Docket No. SPU-03-6.

Searsboro Telephone is a non-rate regulated independent telephone company that provides local exchange service to the Killduff and Searsboro, Iowa, exchanges. Currently, the Searsboro exchange has approximately 210 access lines; the Killduff exchange has approximately 190 access lines. Killduff Telephone is a recently-formed Iowa corporation that intends to provide local exchange and exchange access services to the Killduff exchange. Killduff Telephone has not previously been certified to provide service in any state.

The applicants state that they have entered into an asset purchase agreement whereby Killduff Telephone will acquire the assets of Searsboro Telephone so that Killduff Telephone may begin to provide service to the Killduff exchange. The joint application requests approval for the discontinuance of service for the Killduff exchange by Searsboro Telephone as well as the partial transfer to Killduff Telephone of that portion of Searsboro Telephone's *certificate of public convenience and necessity* which currently allows Searsboro Telephone to provide service to the Killduff exchange.

In support of this request, Killduff Telephone states that it will abide by all applicable statutes, orders, rules, and regulations adopted by the Board for local exchange carriers. Killduff Telephone also states it will adopt the previously-approved dialing parity plan of Searsboro Telephone and will permit customers to obtain interLATA and intraLATA interexchange services from other carriers. Killduff Telephone states that it will effectively adopt the service area boundaries of the Killduff exchange and indicates it will serve all eligible customers in the exchange. Killduff Telephone also filed a proposed tariff containing local exchange rates that match the current rates listed in the Searsboro Telephone tariff. Killduff Telephone asserts that it is well qualified managerially, technically, and financially to provide telecommunications service to the Killduff exchange.

The parties state that the public interest is served by the transfer through the efficient provision of high quality telecommunications services to rural customers and

that there will be direct benefits to the customers of the Killduff and Searsboro exchanges. The parties further state that the transaction will increase operating efficiency and effectiveness by allowing Killduff and Searsboro to each focus on serving a single telephone exchange, rather than spreading limited personnel and management resources over two exchanges.

On May 28, 2003, the Board issued an order docketing this application for further investigation. That order required both parties to clarify how the separation of these two exchanges into separate companies would increase the efficiency of service and benefit consumers in each exchange.

On June 26, 2003, the parties filed a joint response to the Board's May 28, 2003, order. In that response, the parties indicate that the new management for Killduff Telephone intends to make several improvements to the facilities serving the Killduff exchange, including the replacement of switches which will result in the availability of enhanced features and improve the reliability of service in the Killduff exchange. Killduff Telephone also states that it plans to build a fiber ring structure throughout the exchange, which will enhance the redundancy and reliability of the network as well as extend high-speed digital transmission capabilities to areas not currently served by a fiber ring. Searsboro Telephone states that it intends to use the economic gains from the sale of the Killduff exchange to make upgrades to its equipment. The planned upgrades will permit the company to offer additional and enhanced services in the Searsboro exchange.

On July 1, 2003, the parties filed with the Board a copy of the notice which was sent to all local exchange carriers on the Board's mailing lists to inform them of these changes. On July 24, 2003, the Board issued an order extending the time for determination and requiring the parties to notify all interexchange carriers pursuant to 199 IAC § 22.14(4). No objections to the requests have been received.

Iowa Code § 476.29(2) (2003) states that a local exchange carrier "shall not be denied a certificate if the board finds that the applicant possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest." The Board has reviewed the request by Killduff Telephone and finds the necessary technical, financial, and managerial abilities to provide local exchange service in the Killduff exchange have been demonstrated. The parties have clarified how consumers will benefit from the transaction between Searsboro Telephone and Killduff Telephone through the planned upgrades to the existing facilities in both exchanges. Therefore, the Board finds it is in the public interest to grant Killduff Telephone's request for a certificate of public convenience and necessity.

The Board has also reviewed the proposed tariff filed by Killduff, identified as Docket No. TF-03-132, and finds that it substantially complies with Board rules for the filing and processing of tariff pages. The tariff contains rates for both business and residential customers and notice was provided to all affected carriers.

The Board will also approve the parties' joint request to amend Searsboro Telephone's certificate to reflect the removal of the Killduff exchange. An amendment to Searsboro Telephone's certificate (Certificate No. 0116) is being issued concurrently with this order and will become effective upon the filing of Searsboro Telephone's amended tariff.

On September 2, 2003, the parties filed a request for a waiver of 199 IAC 22.23(2) regarding individual customer verification rules for unauthorized changes in telecommunication services. The waiver request was identified as Docket No. WRU-03-57-478.

To grant this waiver, the Board must find, based on clear and convincing evidence, that the request meets the four criteria in 199 IAC 1.3. The four criteria are: 1) the application of the rule would cause undue hardship, 2) the waiver would not prejudice the substantial legal rights of any person, 3) the provisions of the rule are not specifically mandated by statute, and 4) subsequently equal protection of public health, safety, and welfare will be afforded by a means other than prescribed by the rule.

The Board finds that a waiver of 199 IAC 22.23(2) should be granted based on the Board's review of the information provided by Searsboro Telephone and Killduff Telephone. The Board finds that it would be an undue hardship for Killduff Telephone to obtain individual authorization verifications for the change in service providers from each of Searsboro Telephone's customers in the Killduff exchange.

The Board also finds that the waiver will not affect the substantial legal rights of any person and that equal protection of the public health, safety, and welfare have been afforded since all of Searsboro Telephone's customers will receive notice of Killduff Telephone's service in the Killduff exchange.

Finally, the parties stated that a waiver of the Federal Communications Commission's (FCC's) study area requirements will be necessary in connection with this transaction. It has been FCC's policy to grant those waiver petitions that have the approval of the state regulatory agency. The Board affirmatively states that it does not object to the parties' request that a study area waiver be granted by the FCC.

IT IS THEREFORE ORDERED:

1. The joint request filed by Searsboro Telephone Company, Inc., and Killduff Telephone Company on April 29, 2003, for a partial transfer of Searsboro Telephone Company, Inc.'s, certificate of public convenience and necessity is approved.
2. An order amending Certificate No. 0116, issued to Searsboro Telephone Company, Inc., on September 29, 1992, is being issued concurrently with this order and will become effective upon the amendment of its existing tariff.
3. A certificate, identified as Certificate No. 0272, is being issued to Killduff Telephone Company concurrently with this order.

4. The tariff filed by Killduff Telephone Company, filed on April 29, 2003, identified as Docket No. TF-03-132, is approved effective upon the filing of a new exchange map of the Killduff exchange which also reflects the effective date of the transaction.

5. Searsboro Telephone Company, Inc., shall file a tariff revision reflecting the removal of the Killduff exchange from its tariff within 30 days of the date of this order.

6. The joint request by Searsboro Telephone Company, Inc., and Killduff Telephone Company for a waiver of 199 IAC 22.23(2), the verification requirement for unauthorized changes in telecommunications service, is granted.

UTILITIES BOARD

Shane Murray

Mark O. Lambert

Eric Smith

ATTEST:

Judith K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 12th day of September, 2003.

EXHIBIT C

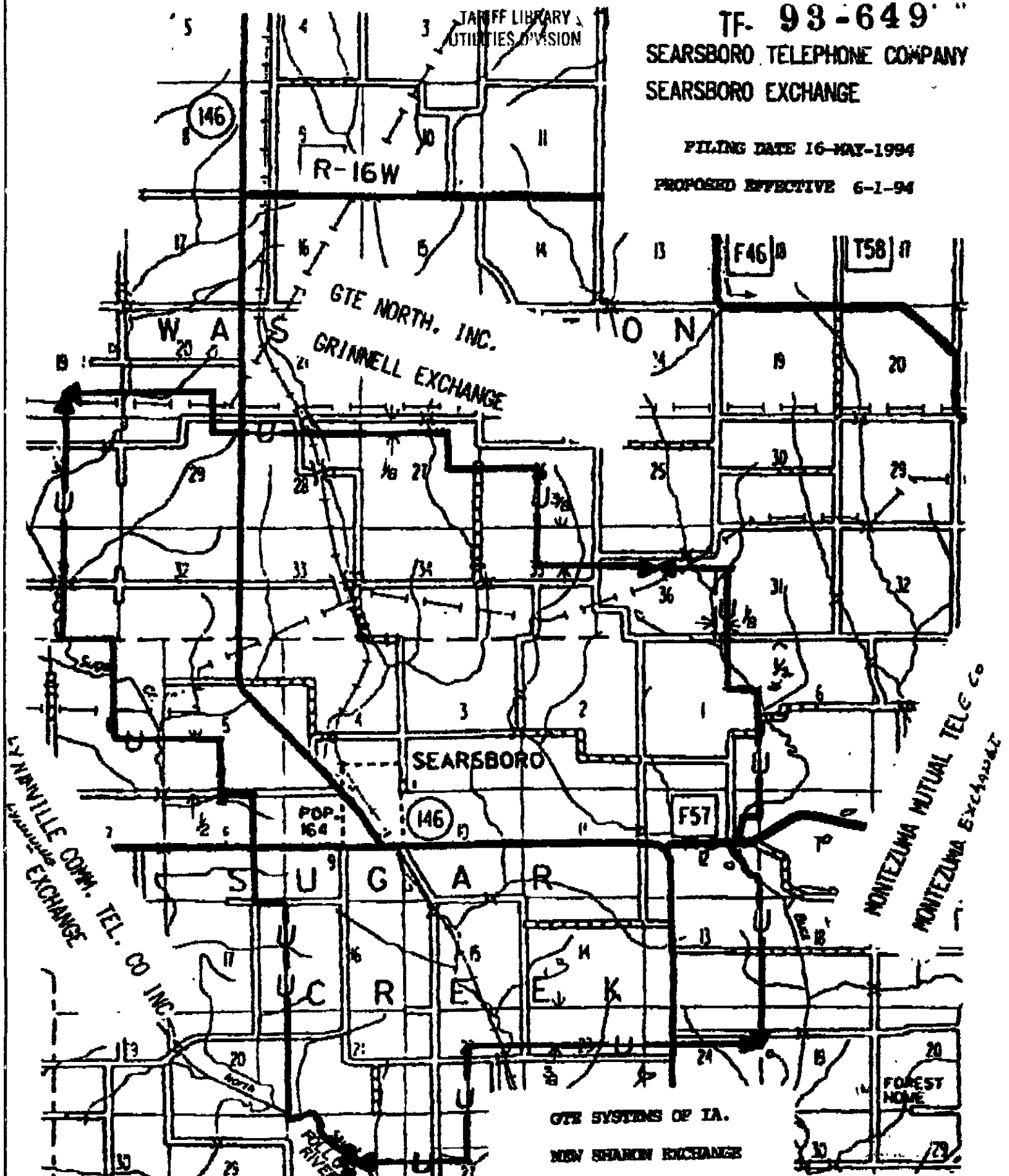
Service Area Maps

TF- 93-649

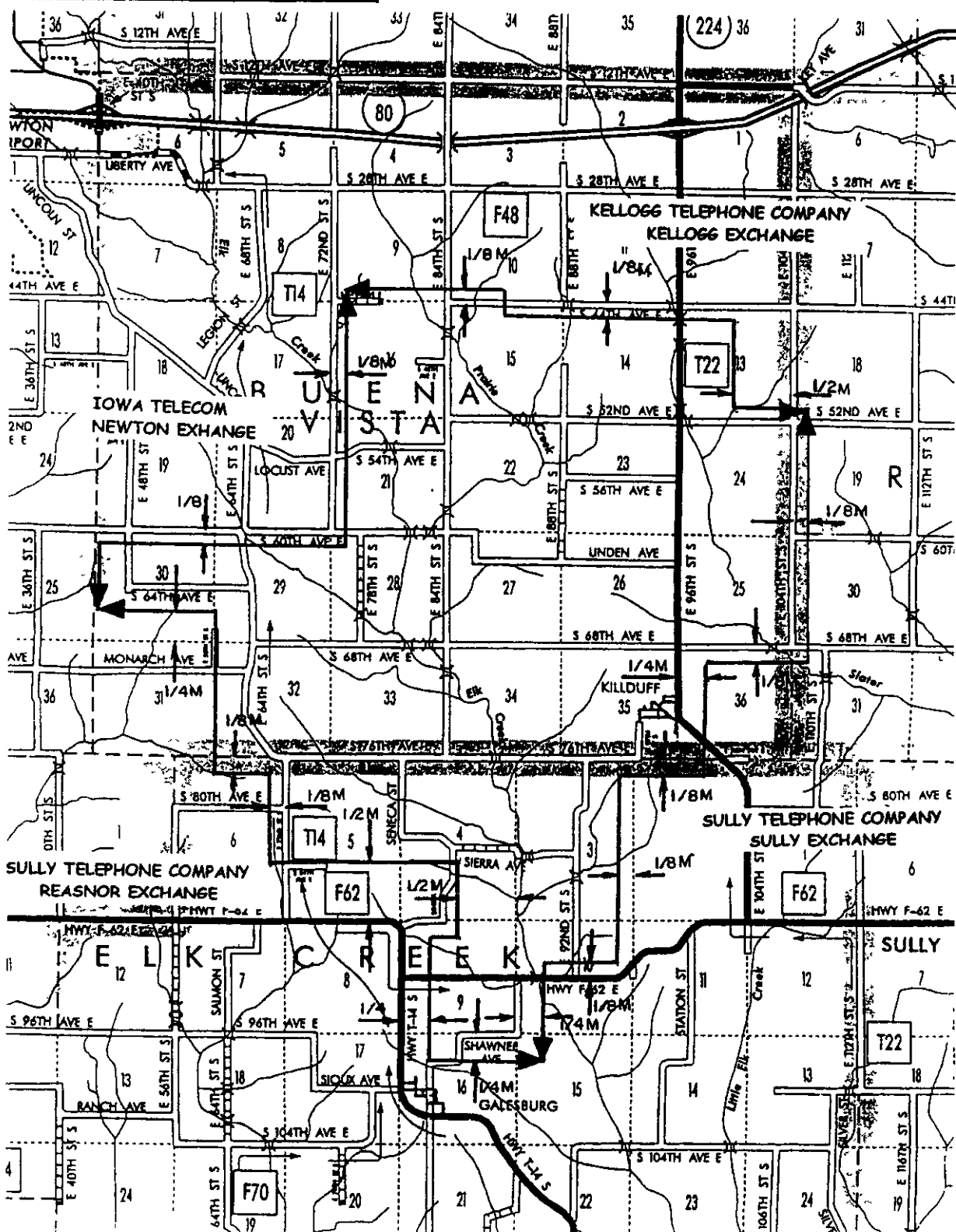
SEARSBORO TELEPHONE COMPANY
SEARSBORO EXCHANGE

FILING DATE 16-MAY-1994

PROPOSED EFFECTIVE 6-1-94

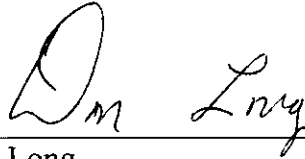


REVISIONS	DATE:	KILDUFF TELEPHONE COMPANY	
		KILDUFF, IOWA	
		EXCHANGE AREA BOUNDARY MAP	
		FIRST FILING October 8, 2003	
		SCALE - 1" = 1 MILE (Reduced, Not to Scale)	



CERTIFICATION ON BEHALF OF
SEARSBORO TELEPHONE COMPANY, INC.

I, Don Long, hereby certify under penalty of perjury that I am authorized to make this certification on behalf of Searsboro Telephone Company, Inc.; that I have read the foregoing document and know the contents thereof; and that the same are true of my own knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true.




Don Long
Searsboro Telephone Company, Inc.

9-30-2003

Date

CERTIFICATION ON BEHALF OF
KILLDUFF TELEPHONE COMPANY

I, Karen Turner, hereby certify under penalty of perjury that I am authorized to make this certification on behalf of Killduff Telephone Company, that I have read the foregoing document and know the contents thereof, and that the same are true of my own knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true



Karen Turner
Killduff Telephone Company

9/26/03

Date